



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
2 NAVY ANNEX  
WASHINGTON DC 20370-5100

JRE  
Docket No: 2965-00  
18 January 2001

From: Chairman, Board for Correction of Naval Records  
To: Secretary of the Navy

Subj: FORMER [REDACTED]  
REVIEW OF NAVAL RECORD

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149  
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Subject, hereinafter referred to as Petitioner, filed enclosure (1) with this Board requesting, as amended, that his naval record be corrected to show that he was not transferred to the Temporary Disability Retired List on 30 September 1994 and subsequently discharged from the Marine Corps; and that he was retained on active duty until such time as he completed sufficient service to transfer to the Fleet Marine Corps Reserve.
2. The Board, consisting of Messrs. Chapman, McCulloch and Zsalman, reviewed Petitioner's allegations of error and injustice on 4 January 2001 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.
3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:
  - a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.
  - b. Enclosure (1) was filed in a timely manner.
  - c. Petitioner underwent a left nephrectomy on 19 August 1993, and was given a diagnosis of renal cell carcinoma. A medical board which convened on 28 August 1993 recommended that he be placed on limited duty for a period of 24 months. That recommendation was approved by the convening authority on 28 September 1993. He was to be excused from strenuous exercise during that period, and expected to undergo a metastatic cancer survey every three months. A final determination of his fitness for duty was to be made at the expiration of the limited duty period. On 10 February 1994, the Commandant of

the Marine Corps forwarded the medical board report to the Physical Evaluation Board (PEB) for action. The PEB requested that a medical board addendum be prepared, and one was written on 31 March 1994. Its authors recommended that Petitioner continue to be followed closely for another 18 months before being considered for return to full duty. In addition, they noted that he would require tumor follow-up for the rest of his life. In a letter dated 3 June 1994, one of the authors of the medical board report advised the PEB, in effect, that Petitioner was capable of performing the physical demands [of his duties], and that there was "absolutely no limitation in his physical capabilities", and he was cleared to engage in strenuous physical activity. The author noted, however, that there were geographic limitations on Petitioner's assignability, i.e., that he be stationed near a "major medical institution" for follow-up evaluation. On 1 July 1994, the PEB made preliminary findings that Petitioner was unfit for duty, and that his condition was ratable at 100%. Petitioner accepted those findings, and was released from active duty on 30 September 1994, and transferred to the TDRL on 1 September 1994. His status was reevaluated by the PEB on 1 November 1999, and he was found fit for duty. He rejected that finding, and requested a formal hearing. The hearing panel which considered his case on 13 January 2000 confirmed the 1 November 1999 findings of the PEB. The findings were approved for the Secretary of the Navy on 10 April 2000.

d. Petitioner contends, in effect, that given his current personal situation, and his inability to meet certain requirements for reenlistment at this time, he cannot reenlist and complete his career. As a result, he will be discharged without entitlement to any further benefits from the Department of the Navy.

#### CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner was actually fit for duty when released from active duty and transferred to the Temporary Disability Retired List in 1994. It finds that had he been found fit for duty at that time, he would have completed his enlistment, and qualified for transfer to the Fleet Marine Corps Reserve. Accordingly, the Board finds the existence of an injustice warranting the following corrective action.

#### RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he was not released from active duty on 30 September 1994, or transferred to the Temporary Disability Retired List.

b. That Petitioner's naval record be further corrected to show that he remained on active duty until 31 March 1996, and that he was transferred to the Fleet Marine Corps Reserve effective 1 April 1996.

c. That a copy of this Report of Proceedings be filed in Petitioner's naval record.

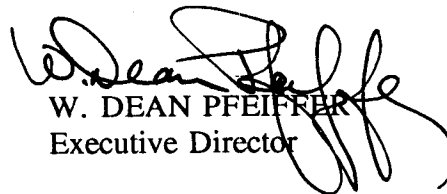
4. Pursuant to Section 6(c) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(c)) it is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN  
Recorder



JAMES R. EXNICIOS  
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER  
Executive Director